

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE  
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

JULY 31 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

JESSICA MARIE VASS,

Appellant.

2 CA-CR 2007-0150

DEPARTMENT A

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of  
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20060316

Honorable Edgar B. Acuña, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General  
By Kent E. Cattani and Kathryn A. Damstra

Tucson  
Attorneys for Appellee

Harriette P. Levitt

Tucson  
Attorney for Appellant

H O W A R D, Presiding Judge.

¶1 After a jury trial, appellant Jessica Vass was convicted of two counts of negligent homicide and aggravated assault with a deadly weapon and one count of criminal damage. The convictions arose from a high-speed car race during which the vehicle Vass was driving collided with another vehicle, killing the two occupants of the other vehicle and injuring the two passengers in her car. The trial court imposed concurrent, aggravated and presumptive sentences, the longest of which was 3.5 years. On appeal, Vass argues there was insufficient evidence to sustain the aggravated assault convictions and that, because the *mens rea* required for aggravated assault and negligent homicide are incompatible, inconsistent verdicts resulted. She contends we should vacate the aggravated assault convictions and sentences. We affirm.

¶2 On appeal, we view the evidence and all reasonable inferences therefrom in the light most favorable to sustaining the jury's verdicts. *See State v. Cropper*, 205 Ariz. 181, ¶ 2, 68 P.3d 407, 408 (2003). Vass argues the record does not support the aggravated assault convictions. Additionally, she maintains that, because she was convicted of negligent homicide, the mental state for which is that the defendant has "fail[ed] to perceive a substantial and unjustifiable risk,"<sup>1</sup> and acquitted of manslaughter, she cannot also be guilty of aggravated assault based on recklessness, an offense that requires a showing that the defendant was "aware of and consciously disregard[ed] a substantial and unjustifiable risk."<sup>2</sup>

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<sup>1</sup>See A.R.S. §§ 13-1102, 13-105(9)(d).

<sup>2</sup>See A.R.S. §§ 13-1203(A)(1), 13-105(9)(c).

¶3 Vass appears to suggest that, because the passengers in her vehicle testified they did not believe she had intended to harm them and because they were not concerned about their safety before the accident, this somehow shows that she had failed to perceive the risks associated with her conduct. Therefore, she argues, she did not have the requisite mental state to support the aggravated assault convictions. However, the evidence established that Vass had been racing another vehicle at a speed greater than 105 miles per hour on a city street, far in excess of the posted, thirty-five-mile-per-hour speed limit when the accident occurred. At trial, Vass characterized her own conduct as “stupid” and “dumb” and testified she “wasn’t thinking that [her conduct] was dangerous at the time.” *See State v. Cox*, 217 Ariz. 353, ¶ 27, 174 P.3d 265, 269 (2007) (credibility of witnesses and weight and value given to testimony are jury questions). Notwithstanding Vass’s testimony, which the jury apparently rejected, and based on other evidence presented at trial, the jury reasonably could have found the evidence sufficient to support a finding under A.R.S. § 13-105(c) that Vass had been “aware of and consciously disregard[ed] a substantial and unjustifiable risk” that others might be seriously injured by her conduct and that such a risk constituted “a gross deviation from the standard of conduct that a reasonable person would observe in the situation.” *See State v. Miles*, 211 Ariz. 475, ¶ 27, 123 P.3d 669, 676 (App. 2005) (evidence that defendant drove truck through stop sign and collided with another truck sufficient to support finding of defendant’s recklessness).

¶4 In a related argument, Vass contends one could not fail to perceive a risk while at the same time be aware of and consciously disregard that same risk. Thus, she argues, the verdicts are incompatible. Assuming without deciding that these verdicts are in fact, inconsistent, the law in Arizona clearly permits such verdicts. *See Evanchyk v. Stewart*, 202 Ariz. 476, ¶ 17, 47 P.3d 1114, 1119 (2002); *State v. Zakhar*, 105 Ariz. 31, 32, 459 P.2d 83, 84 (1969).

¶5 Accordingly, Vass's convictions and sentences are affirmed.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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GARYE L. VÁSQUEZ, Judge